

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Text is provided for the portion of those clauses where fill-in information is required. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these address(es):

<u>Federal Acquisition Regulations</u>	http://www.arnet.gov/far/
<u>Department of Energy Acquisition Regulations</u>	http://professionals.pr.doe.gov

The following FAR Clauses are incorporated by reference:

- I.1 52.202-1 DEFINITIONS (DEC 2001)**
- I.2 52.203-3 GRATUITIES (APR 1984)**
- I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**
- I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**
- I.5 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**
- I.6 52.203-8 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**
- I.8 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**
- I.9 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)**

- I.10 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
- I.11 52.215-2 AUDIT AND RECORDS - NEGOTIATION (JUN 1999)
- I.12 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
- I.13 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)
- I.14 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997)
- I.15 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)
- I.16 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997)
- I.17 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)
- I.18 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)
- I.19 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)
- I.20 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)
- I.21 52.216-7 ALLOWABLE COST AND PAYMENT (DEC 2002)/DEAR 952.216-7, ALTERNATE II
- I.22 52.216-10 INCENTIVE FEE (MAR 1997)

(e) Fee payable.

- (1) The fee payable under this contract shall be the target fee increased by thirty (30) cents for every dollar that the total allowable cost is less than the target cost or decreased by thirty (30) cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than fifteen (15) percent or less than zero (0) percent of the target cost.
- (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations

in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of-

- (i) Payments made under assignments; or
- (ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

- I.23 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)**
- I.24 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) AND ALTERNATE II (OCT 2001)**
- I.25 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)**
- I.26 52.219-23 NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (JUN 2003)**
- I.27 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING (OCT 1999)**
- I.28 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**
- I.29 52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**
- I.30 52.222-3 CONVICT LABOR (JUN 2003)**
- I.31 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 2000)**
- I.32 52.222-6 DAVIS-BACON ACT (FEB 1995)**
- I.33 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)**
- I.34 52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)**
- I.35 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)**
- I.36 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**
- I.37 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)**
- I.38 52.222-12 CONTRACT TERMINATION - DEBARMENT (FEB 1988)**

- I.39 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**
- I.40 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**
- I.41 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)**
- I.42 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**
- I.43 52.222-26 EQUAL OPPORTUNITY (APR 2002)**
- I.44 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**
- I.45 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**
- I.46 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**
- I.47 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)**
- I.48 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

EMPLOYEE CLASS	MONETARY WAGE-FRINGS BENEFITS
Guards	15.16
Boiler Operator Helper	15.03
Carpenter	19.68
Carpenter, Apprentice	15.03
Chemical Operator	19.68
Electrician	20.80
Electrician, Apprentice	15.03

CONFORMED CONTRACT as of 11/7/2005
****FOR INFORMATIONAL PURPOSES ONLY****

DE-AC07-05ID14516

EMPLOYEE CLASS	MONETARY WAGE- FRINGE BENEFITS
Hazwat	19.68
Heavy Equip Operator	20.80
Indus Vacuum Ldr Oper	17.39
Industrial Mechanic	20.80
Instrument Mechanic, Apprentice	15.03
Laborer, General	10.95
Laborer, Transportation	12.31
Laundry Worker	12.31
Locomotive/Switchman	17.39
Machinist	20.80
Mason	19.68
Millwright	20.80
Millwright, Apprentice	15.03
Motor Vehicle Operator	17.39
Oiler	15.03
Painter	19.68
Pipefitter	20.80
Pipefitter, Apprentice	15.03
Porter	12.31
Private Motor Carrier Oper	18.54
Profess Warehouse Attend	16.39
Pump Operator	15.03
QA Checker	15.16
Respirator Wash	15.03
Rigger	20.80
Stationary Engineer	20.80
Waste Water Plant Operator	19.68
Water Plant Operator	19.68
Welder	20.80
Mailroom Supply Specialist	13.55
Word Processing Tech II	13.55
Accounting Tech II	15.16
Info/Records Spec II	15.16
Information Management Tech	18.79
Inventory Supply Spec	18.79
Medical Assistant	15.16
Procurement Tech II	16.91
Secretary III	18.79
Engineer Aide II	15.16
Environ/Lab Tech II	15.16
Info/Records Spec III	18.79
Lead Mailroom Supply Spec	18.79
Procurement Tech III	18.79

CONFORMED CONTRACT as of 11/7/2005
****FOR INFORMATIONAL PURPOSES ONLY****

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EMPLOYEE CLASS	MONETARY WAGE- FRINGE BENEFITS
Sr. Repro Equip Operator	15.16
Quality Verifier II	18.79
Env/Lab Technician III	18.79
Health Physics Tech III	22.98
Drafter III	18.79
Rad Control Tech III	22.98
Sr. Accounting Tech	18.79
Sr. HR/Industrial Rel Spec	33.33
Engineer Aide III	18.79
Sr. Graphics Artist	22.98
Engineer Technician	22.98
Sr. Drafter	22.98
Sr. Env/Lab Tech	22.98
Sr. Executive Secretary	22.98
Sr. Fire Ftr/Em Response Spec	18.79
Sr. Rad Con Tech	22.98
Sr. Health Phys Tech	22.98
Sr. Indust Hygiene Tech	22.98
Sr. Quality Verifier	22.98

I.49 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.

- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal

Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

In meeting these requirements, the contractor may reference the INEEL "MSDS Net" (MSDS database system).

I.50 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

I.51 52.223-6 DRUG-FREE WORKPLACE (MAR 2001)

I.52 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

I.53 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The contractor shall insert the name of the substance(s).

I.54 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

I.55 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (JUN 2003)

I.56 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

- I.57 52.224-2 PRIVACY ACT (APR 1984)**
- I.58 52.225-11 BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (JUN 2003)**
- I.59 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2003)**
- I.60 52.227-3 PATENT INDEMNITY (APR 1984)**
- I.61 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data contained on pages TBD, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data-General" clause contained in this contract) in and to the technical data contained in the proposal dated TBD, upon which this contract is based.

- I.62 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**
- I.63 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)**
- I.64 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)**
- I.65 52.232-17 INTEREST (JUN 1996)**
- I.66 52.232-18 AVAILABILITY OF FUNDS (APR 1984)**
- I.67 52.232-22 LIMITATION OF FUNDS (APR 1984)**
- I.68 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)**
- I.69 52.232-25 PROMPT PAYMENT (FEB 2002)**
- I.70 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER-OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)**

- (a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer. (2) In the event the Government is unable to release one or more payments by EFT, the contractor agrees to either- (i) Accept payment by check or some other mutually agreeable method of payment; or (ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause). (b) Mandatory submission of contractor's EFT information. (1)

The contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by **no later than 15 days prior to submission of the first request for payment**. If not otherwise specified in this contract, the payment office is the designated office for receipt of the contractor's EFT information. If more than one designated office is named for the contract, the contractor shall provide a separate notice to each office. In the event that the EFT information changes, the contractor shall be responsible for providing the updated information to the designated office(s).

- I.71 52.233-1 DISPUTES (JUL 2002)
- I.72 52.233-3 PROTEST AFTER AWARD (AUG 1996) AND ALTERNATE I (JUN 1985)
- I.73 52.236-19 ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)
- I.74 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
- I.75 52.237-3 CONTINUITY OF SERVICES (JAN 1991)
- I.76 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
- I.77 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
- I.78 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)
- I.79 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)
- I.80 52.242-13 BANKRUPTCY (JUL 1995)
- I.81 52.243-2 CHANGES – COST REIMBURSEMENT (AUG 1987) AND ALTERNATE 1 (APR 1984)
- I.82 52.243-7 NOTIFICATION OF CHANGES (APR 1984)
- I.83 52.244-2 SUBCONTRACTS (AUG 1998)

- (e) If the contractor has an approved purchasing system, the contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: **to be determined by Contracting Officer's letter in accordance with Contracting Officer's letter dated June 17, 2005.**

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- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: TBD Premier Technology, Inc.

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I.84 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

I.85 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2003)

I.86 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JUN 2003)

I.87 52.245-19 GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)

I.88 52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)

I.89 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

- (b) If the Government is shown as the consignor or the consignee, the annotation shall be: Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

- (c) If the Government is not shown as the consignor or the consignee, the annotation shall be: Transportation is for the Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. DE-AC07-04ID14516. This may be confirmed by contacting the person listed in Section G of this contract.

I.90 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

I.91 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. – FLAG COMMERCIAL VESSELS (APR 2003)

I.92 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996)

I.93 52.249-14 EXCUSABLE DELAYS (APR 1984)

I.94 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

I.95 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

I.96 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.
- (b) The use in this solicitation of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.97 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.98 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

The following DEAR Clauses are incorporated by reference:

I.99 952.202-1 DEFINITIONS. (JAN 1997)

I.100 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

I.101 952.204-2 SECURITY (MAY 2002)

I.102 952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997)

I.103 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)

I.104 952.204-73 FACILITY CLEARANCE (MAY 2002)

I.105 952.204-75 PUBLIC AFFAIRS (DEC 2000)

I.106 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

I.107 952.208-70 PRINTING (APR 1984)

I.108 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) AND ALTERNATE I (JUN 1997)

- I.109 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)**
- I.110 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**
- I.111 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**
- I.112 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**
- I.113 952.237-70 COLLECTIVE BARGAINING AGREEMENTS – PROTECTIVE SERVICES (AUG 1993)**
- I.114 952.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS)**
- Modify FAR 52.245-5 by adding “and DOE Acquisition Regulation Subpart 945.5” after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.
- I.115 RESERVED**
- I.116 952.247-70 FOREIGN TRAVEL (DEC 2000)**
- I.117 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**
Note: See Clause I.142 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005), paragraph (l), for Effective date.
- I.118 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)**
- I.119 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)**
- I.120 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)**
- I.121 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000)**
- I.122 RESERVED**
- I.123 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)**
- I.124 970.5226-1 DIVERSITY PLAN (DEC 2000)**
- I.125 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)**

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- I.126 970.5226-3 COMMUNITY COMMITMENT (DEC 2000)**
- I.127 970.5227-1 RIGHTS IN DATA FACILITIES (DEC 2000)**
- I.128 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)**
- I.129 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**
- I.130 970.5227-6 PATENT INDEMITY SUBCONTRACTS (DEC 2000)**
- I.131 970.5227-7 ROYALTY INFORMATION (DEC 2000)**
- I.132 970.5227-9 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)**
- I.133 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NON-PROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002)**
- I.134 970.5227-11 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR -PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)**
- I.135 970.5228-1 INSURANCE-LITIGATION AND CLAIMS (MAR 2002)**
- I.136 970.5231-4 PRE-EXISTING CONDITIONS. (DEC 2000) ALTERNATE II (DEC 2000)**
- I.137 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)**

The following Clauses are incorporated in full text:

I.138 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

- (a) The contractor shall make the following notifications in writing:
 - (1) When the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have

occurred or are certain to occur as a result of a change in ownership.

- (a) The contractor shall-
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- (c) The contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I.139 952.215-70 - KEY PERSONNEL (DEC 2000)

- (a) The personnel listed in Section J, Attachment F, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the contractor may remove or suspend such person at once, although the contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

I.140 952.242-70 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contract Officer's Representative. The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual SOW.
 - (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the DOE.
- (b) The contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the SOW
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) Changes contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the contractor's right to perform to the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the CO in writing within five working days after receipt of any such instruction or direction and must request the CO to modify the contract accordingly. Upon receiving the notification from the contractor, the CO must:

- (1) Advise the contractor in writing within 30 days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the contractor in writing within a reasonable time that the DOE will issue a written change order; or
 - (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the contractor and CO either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect the technical direction will be subject to the provisions of the clause in Section I 52.233-1 "Disputes."

**I.141 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT –
SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED
INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH
[JAN 2004]**

- (a) General.
- (1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health (WS&H), including compliance with applicable law, regulation, and DOE directives. The term "contractor" as used in this clause to address failure to comply shall mean "contractor or contractor employee."
 - (2) In addition to other remedies available to the Federal Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the contracting officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the contractor in accordance with the terms and conditions of this clause.
 - (3) Any reduction in the amount of fee or profit earned by the contractor will be determined by the severity of the contractor's failure to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

- (1) If in any period (see 48 CFR 952.223-76 (b)(2)) it is found that the contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The contracting officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c) and 48 CFR 923.7001(b)). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii), and (viii) apply to WS&H only):
 - (i) Degree of control the contractor had over the event or incident.
 - (ii) Efforts the contractor had made to anticipate and mitigate the possibility of the event in advance.
 - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
 - (iv) General status (trend and absolute performance) of: safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.
 - (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).
 - (vi) Event caused by "Good Samaritan" act by the contractor (e.g., offsite emergency response).
 - (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).
 - (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)

- (i) Except in the case of performance-based, firm-fixed-price contracts (see paragraph (b)(3) of this clause), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of three months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average quarterly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.
 - (ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.
- (3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.
- (c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:
 - (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a

Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, or any classification level of information in a Special Access SAP, Program (SAP), identified as sensitive compartmented information (SCI), or weapons data information identified as SCI, or high risk nuclear weapons-related data.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
 - (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other classified information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), identified as sensitive compartmented information SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
 - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
 - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except

for information covered by paragraph (c)(1)(iii) of this clause).

- (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import will be considered third degree:
 - (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
 - (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
 - (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the contractor's Safeguards and Security Plan or other security plan, as applicable.
 - (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.
- (d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

- (1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:
 - (i) Type A accident (defined in DOE Order 225.1A).
 - (ii) Two Second Degree performance failures during an evaluation period.
- (2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:
 - (i) Type B accident (defined in DOE Order 225.1A).
 - (ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.
 - (iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.
- (3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:
 - (i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

- (ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.
- (iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
- (iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

I.142 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including

transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) *Waiver of Defenses.* In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless

of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (l) Effective date. This contract was in effect prior to August 8, 2005, and contains the clause at DEAR 952.250-70 (JUNE 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

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(End of Clause)